

825 KAR 1:030. Penalties for subsequent violations; criteria for modification of civil penalties and fines.

RELATES TO: KRS 351.025(1), (2), 351.194

STATUTORY AUTHORITY: KRS 351.025(1)(a), (c), 351.194(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.025(1)(a) requires the Mine Safety Review Commission to establish a maximum penalty for certified miners who commit subsequent offenses. KRS 351.025(1)(c) requires the Mine Safety Review Commission to establish a maximum penalty for noncertified personnel who commit subsequent offenses. KRS 351.194(6) authorizes the Mine Safety Review Commission to establish criteria that may be used to modify the civil penalties promulgated by the Kentucky Department for Natural Resources. This administrative regulation establishes the maximum penalties for certified and noncertified personnel who commit subsequent offenses. In addition, this administrative regulation establishes the criteria the commissioners may use to modify the penalties set forth in 805 KAR 8:030, 805 KAR 8:040, 805 KAR 8:050, and 805 KAR 8:060.

Section 1. Definitions. (1) "Certified miner" or "certified personnel" means a miner, mine foreman, assistant mine foreman, electrician, shotfirer, underground or surface mining instructor, or mine emergency technician (MET).

(2) "Noncertified personnel" means any person in or around a coal mine who has not procured a certificate from the Division of Mine Safety to perform particular work duties.

(3) "Subsequent offense" means any intentional violation of, or order to violate, a mine safety law which places a miner in imminent danger of serious injury or death, as adjudicated by the Kentucky Mine Safety Review Commission, and which occurs after the individual's or entity's first offense.

Section 2. Certified Miners. The maximum penalty to be imposed upon a certified miner for subsequent offenses shall be revocation.

Section 3. Noncertified Personnel. The maximum penalty to be imposed upon noncertified personnel for subsequent offenses shall be a civil monetary fine against the noncertified person equivalent to the value of the wages received by that person, not to exceed sixty (60) working days.

Section 4. Modification of Civil Penalties and Fines. The maximum penalty for offenses established by 805 KAR 8:030, 805 KAR 8:040, 805 KAR 8:050, and 805 KAR 8:060, may be modified on a case-by-case basis using the following criteria:

- (1) Cooperation with investigators;
- (2) The severity of the harm done, such as whether the offense resulted in:
 - (a) Death;
 - (b) Serious physical injury; or
 - (c) The placement of an individual in imminent harm;
- (3) Acceptance of responsibility for actions;
- (4) History of violations;
- (5) Adjudicated violations in other states;
- (6) Mitigating circumstances; and
- (7) Aggravating circumstances. (29 Ky.R. 201; 1272; eff. 11-12-2002; TAm eff. 8-9-2007; Crt eff. 8-6-2018; TAm eff. 5-14-2019.)